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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 5th December 1952

No. 19/86/52-Elec.III.—WHEREAS the election of Shri Chandreshwar Narain Prasad Singh of village Bhandari, Pergana Mahila, P. S. Belsand, District Muzaffarpur, as a member of the House of the People from the Muzaffarpur North-West constituency of that House, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Baljnath Prasad Varma of village Kamrauli, Sub-Division Sitamarhi, District Muzaffarpur;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said petition, has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

ELECTION TRIBUNAL, PATNA

PRESENT:—Shri Basu Prasad, Retired District Judge *Chairman.*
 Shri Hargobind Prasad Sinha, Retired District Judge *Member.*
 Shri Aditya Narain Lal, Advocate *Member.*

ELECTION PETITION No. 86 of 1952

In the matter of election to the House of the People from the Muzaffarpur North-West Constituency.

Shri Baljnath Prasad Varma, son of Late Shri Chandradeo Narain Varma, resident of Village Kamrauli, Sub-division Sitamarhi, District Muzaffarpur—PETITIONER.

Versus

1. Shri Chandreshwar Narain Prasad Singh, son of Bishwanath Prasad Singh, deceased, resident of Village Bhandari, Pergana Mahila, P.S. Belsand, District Muzaffarpur.

2. Shri Ganesh Kumar Narain Singh, son of Fekan Singh, deceased, resident of Village Dhankaul, Pergana Babra, P.S. Sheohar, District Muzaffarpur.

3. Thakur Jugal Kishore Singh, son of Sadhu Saran Singh, resident of Village Dumri-Khurad, Pergana Babra Champaran, P.S. Mojonganj, District Muzaffarpur.

4. Babu Kedar Singh, son of Babu Jallal Singh, deceased, resident of Village Dumri-Kalan, Pergana Babra Champaran, P.S. Majorganj, District Muzaffarpur

5. Thakur Nagnarain Singh, son of Babu Ramdayalu Singh, resident of Village Dumri-Khurd, Pergana Babra Champaran, P.S. Mojorganj, District Muzaffarpur.

6. Shri Krishna Chandra, son of Late Shri Harish Chandra, resident of Kali Koithi, a quarter in ward No. 4, in the Town of Muzaffarpur.....RESPONDENTS.
For the Petitioner.—Mr. Awdhesh Nandan Sahay and

Mr. K. P. Verma—Advocates.

For the Respondent No. 1—Mr. P. R. Das, Bar-at-Law,

Mr. B. D. Singh, Bar-at-Law and

Mr. Lal Narain Singh, Advocate.

For the Respondent No. 2—Chaudury Nawal Kishore Prasad Vakil.

For the Respondent No. 6—Mr. Indradeva Prasad.

Shri Baijnath Prasad Verma, one of the unsuccessful candidates for election to the House of the People from the Muzaffarpur North-West Constituency, has filed this election petition, calling in question the election of Shri Chandreshwar Narayan Prasad Singh (Respondent No. 1) and seeking a declaration that the election in the said Constituency is wholly void.

There were as many as 7 candidates for election to the House of the People from Muzaffarpur North-West Constituency. Shri Krishna Chandra (Respondent No. 6) was one of such candidates and he presented five nomination papers on the 24th November, 1951, before the Returning Officer, Mr. N. N. Gazdar, who happened to be the Sub-Divisional Officer of Sitamarhi in the District of Muzaffarpur. Shri Krishna Chandra also deposited Rs. 500 as security deposit, as required under the Election Law. He also filed a certified copy of the extract from the Electoral Roll of the Muzaffarpur East Parliamentary Constituency in which his name had been entered as an elector. The Returning Officer, on the presentation of the nomination papers, satisfied himself that the names and electoral roll numbers of the candidate and his proposers and seconders, as entered in the nomination papers, were the same as those entered in the Electoral Rolls. It is said that the Returning Officer, after so satisfying himself, entered serial numbers on the nomination papers and returned the certified copy of the extract from the Electoral Roll to Shri Krishna Chandra. On the date fixed for the scrutiny of nominations, namely, on the 1st December, 1952, the Returning Officer asked for the production of the Electoral Roll in which the name of Shri Krishna Chandra was entered as an elector. It was submitted on behalf of Shri Krishna Chandra that the Returning Officer had already satisfied himself by looking into the certified copy of the Electoral Roll and comparing the same with the entries in the nomination papers. It was, further, submitted that, in case the document was required again, a little time should be allowed so that the document might be brought from the Sitamarhi lodge of Shri Krishna Chandra which was two miles away from the Court. The Returning Officer was told that a car had already been sent to bring the document. The Returning Officer, however, expressed that he would not adjourn the proceedings and would reject the nomination if the document were not produced. It is said that Thakur Jugal Kishore Singh (Respondent No. 3) then also objected, insisting that Shri Krishna Chandra's nomination should be rejected forthwith. The Returning Officer, it is alleged, did not wait even for a little while and he rejected the nomination of Shri Krishna Chandra. It is contended that the rejection of the nomination of Shri Krishna Chandra was improper and illegal. It is, then, alleged that the Returning Officer, after rejecting the nomination of Shri Krishna Chandra, left the Court Room at 11-33 A.M. Shortly after he left the Court Room, a certified copy of the Electoral Roll was brought and filed before the Assistant Returning Officer, who noted the time of the filing, namely, 12-02 P.M. on 1st December 1951. Thereafter, Shri Krishna Chandra filed an application for review of the order of rejection of the nomination, but that application was rejected.

Some of the candidates, namely Respondents Nos. 2 and 4 withdrew from the election within the prescribed time. Elections were held at several polling stations in the said Constituency on the appointed dates and the result of the election was duly declared and published in the Official Gazette.

It is urged that the illegal rejection of the nomination of Shri Krishna Chandra has materially affected the result of the election and the petitioner, who was a duly nominated candidate and who contested in the said election, has suffered as a result thereof and, therefore, has the right to present the election petition.

On these allegations and contentions, the petitioner seeks the reliefs stated above and also prays for costs.

The election petition is resisted by the Respondent No. 1, the successful candidate at the election. He has filed a written statement contending that the nomination of the Respondent No. 6 was rightly rejected, for he (Respondent No. 6), at the time of the scrutiny of nomination papers, failed to produce the Electoral Roll or a certified copy thereof in proof of the validity of his nomination. It is, further, contended that the Returning Officer had no power to adjourn the proceedings for the purpose of production of the said document by the Respondent No. 6. It is also contended that the result of the election has not been materially affected by reason of the rejection of the nomination of the Respondent No. 6. It is lastly urged that the petitioner is not entitled to maintain the election petition.

The Respondents Nos. 2 and 6 have filed separate written statements supporting the election petition.

The following issues arise for decision:—

ISSUES

1. Is the petitioner entitled to maintain the election petition?
2. Was the nomination of the Respondent No. 6 improperly rejected? If so, has the result of the election been materially affected by such rejection?
3. Is the election in the Constituency in question wholly void?
4. Is the election of the Respondent No. 1 liable to be set aside?
5. To what relief, if any, is the petitioner entitled?

FINDINGS

Issue No. 2.—The only ground on which the election in question has been challenged is that the Returning Officer improperly rejected the nomination of Shri Krishna Chandra (Respondent No. 6).

Shri Krishna Chandra filed several nomination papers on the 24th November, 1951, and the requirements of Sections 33 and 34 of the Representation of the People Act, 1951, were fulfilled. The nomination papers were duly filled in and signed by the candidate, his proposer and seconder; they contained the necessary declarations, and they were delivered to the Returning Officer before 3 p.m. Thus, the requirements of Section 33 were fulfilled. Necessary deposit of Rs. 500 under Section 34 was also made by him. Shri Krishna Chandra was, thus, a duly nominated candidate. There is no dispute on this point.

Section 33(5) of the Representation of the People Act, 1951, lays down "On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls; Provided that the Returning Officer may—

- (a) permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and
- (b) where necessary, direct that any clerical or printing error in the said entries shall be overlooked".

Sub-section (6) of that Section provides "If at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer, he shall require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll".

In the present case, Shri Krishna Chandra's name was registered as an elector in Muzaffarpur East Parliamentary Constituency, which was outside the Sub-division of Sitamarhi, for which the then S.D.O. of Sitamarhi, Mr. N. N. Gazdar, was the Returning Officer. Shri Krishna Chandra, therefore, was required to produce before the Returning Officer either a copy of the Electoral Roll in which his name was entered as an elector or a certified copy of such Roll, in order to satisfy the Returning Officer that his name and electoral roll number as entered in the nomination papers were the same as those entered in the Electoral Roll. He did produce a certified copy of the Electoral Roll and the Returning Officer, Mr. N. N. Gazdar, admits in his evidence that he had satisfied himself on the above point at the time of presentation of the nomination papers. As regards the proposers and seconders in the

nomination papers, the verification, it appears, was made with reference to the Electoral Roll of Sitamarhi Sub-division which was with the Returning Officer. In the present case, it appears, there was no occasion to permit any clerical error in the nomination papers to be corrected or to direct that any clerical or printing error in the entries shall be overlooked.

The Returning Officer, then, took certain actions under the provisions of Section 35 of the Representation of the People Act, 1951. One of such actions was that he caused to be affixed in some conspicuous place in his office a "notice of the nomination containing descriptions similar to those contained in the nomination papers" in Form 2, under Rule 8 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. This was done with a view to give opportunity to the rival candidates to object, if necessary, to the nomination at the time of the scrutiny.

Then came the stage of the scrutiny of nominations. The date for scrutiny was fixed not by the Returning Officer, but by some higher authority, but the time for commencement of the scrutiny and the place at which scrutiny was to be held were fixed by the Returning Officer. Section 36(1) of the Representation of the People Act, 1951, provides that on the date fixed for the scrutiny, the candidates, their election agents, one proposer and one seconder of each candidate and one person duly authorised in writing by each candidate may attend the scrutiny. The Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates. In the present case, the evidence of the Returning Officer shows that the candidates and their representatives were present when the scrutiny was taken up.

The scrutiny was taken up at or about the appointed hour and the evidence of Mr. Gazdar shows that the whole scrutiny was finished in 40 to 45 minutes. After finishing the scrutiny, Mr. Gazdar left the Court.

From the evidence it appears that, at the scrutiny of the nomination papers of Shri Krishna Chandra, the Returning Officer again demanded the Electoral Roll or a certified copy of the Roll for the purpose of checking the name, the electoral roll number and the age of the candidate as entered in the nomination papers. It was submitted on behalf of the candidate (Krishna Chandra) that it was not necessary to produce the Electoral Roll again as the Returning Officer had already satisfied himself at the earlier stage by looking into the Roll that the name and electoral roll number of the candidate as entered in the nomination papers were the same as those entered in the Roll. The Returning Officer, however, did not accede to this contention and insisted on the production of the Roll saying that, among other things, the age of the candidate had to be checked and this was not done at the earlier stage at the time of presentation of the nomination papers. Then, the Respondent No. 6 (Krishna Chandra) wanted a little time for the same day to produce the document. This was practically refused with the result that the nomination of Krishna Chandra was rejected on the same day, a little before 12 noon. It is noteworthy that while Krishna Chandra wanted some time to produce the Electoral Roll, he told the Returning Officer that he had already sent a man to fetch the document from his Sitamarhi lodge which was 2 or 2½ miles off from the Court (where scrutiny was being held). After the Returning Officer left the Court, Dinesh Chandra (P.W. 1), brother of Krishna Chandra, who was sent to bring the document, arrived with the certified copy of relevant extract from the Electoral Roll and the document (Ex. 1) was filed before the Assistant Returning Officer on the same day at 12-02 hours. The Assistant Returning Officer noted on Ex. 1 the time when it was filed and also noted that the document was filed after the scrutiny by the Returning Officer was over and after he had left the place [Vide Ex. 1(a)]. It is clear upon reading Section 22 of the Representation of the People Act, 1951, that the Assistant Returning Officer was not authorised to perform any act relating to the scrutiny of nominations unless the Returning Officer was unavoidably prevented from performing that act. The filing of the document before the Assistant Returning Officer was, therefore, of no consequence so far as the scrutiny was concerned.

The question arises whether the Returning Officer was justified in not granting a little time, as prayed for, for production of the certified copy of the Electoral Roll. It has been contended by Mr. P. R. Das, Counsel for the contesting respondent, that, in view of the provisions of Section 36(3) of the Representation of the People Act, 1951, the Returning Officer could not allow any adjournment of the proceedings and since granting any time for production of the document amounted to adjournment of the proceedings, the Returning Officer could not grant any time. Mr. Awdhesh Nandan Sahay, advocate for the petitioner, has, on the other hand, argued that 'adjournment' contemplated by this section means adjournment to another date and does not include granting a little time for the same day for

production of any material evidence. Section 36(5) reads as follows "The Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:"

"Provided that in case an objection is made the candidate concerned may be allowed time to rebut it not later than the next day but one following the day fixed for scrutiny, and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned". Upon reading the Section as a whole, it appears that 'adjournment', contemplated by the Section, means adjournment to another date. The section requires that scrutiny must be held on the date appointed and only in two circumstances, namely, (i) when the proceedings are interrupted or obstructed by riot or open violence or by causes beyond the Returning Officer's control, and (ii) when an objection is made to a nomination, can the Returning Officer adjourn the proceedings. In the present case, neither of the two circumstances arose. From the evidence of Mr. Gazdar it appears clearly that no candidate or his legal representative objected to any nomination. The whole object of the section seems to be that the Returning Officer shall not alter the date fixed for the scrutiny and, once when the scrutiny has commenced, shall not adjourn the proceedings, to another date, except under certain circumstances provided for in the section.

The Returning Officer was, undoubtedly, exercising a judicial function at the scrutiny. The scrutiny was an important step in the election. Before rejecting the nomination of a candidate at the scrutiny, he ought to have realised that he was dealing, not only with the right of a particular individual to stand for election, but also with the right of the electorate to vote for that particular individual. The task was, therefore, very responsible and, in this view of the matter, the Returning Officer should have exercised proper judicial mind, but unfortunately, this was not done in the present case. The time for commencement of the scrutiny was fixed, but not the time when it was to end. The scrutiny could continue that day (1st December 1951), till the working hours, namely, till 4-30 P.M. The Returning Officer, without infringing any provision of law, could give a little time to the respondent No. 6 to produce the document. He should have done so, especially in view of the fact that the document had already been shown to him at an earlier stage and he had already satisfied himself under Section 33(5) of the Act that the name and electoral roll number of the candidate were the same as those entered in the Electoral Roll and also in view of the fact that no objection was raised by any party to the nomination of the respondent No. 68.

The Returning Officer rejected the nomination of the respondent No. 6 as the Electoral Roll or a certified copy of the Roll was not produced. He has clearly said so in his evidence. The Order (Ex. 3) rejecting the nomination also shows the same thing. Section 36(2) of the Representation of the People Act, 1951, is very important in this connection. Section 36(2) runs as follows:—

"The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:—

- (a) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act; or
- (b) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act; or
- (c) that a proposer or seconder is disqualified from subscribing a nomination paper under sub-section (2) of section 33; or
- (d) that there has been any failure to comply with any of the provisions of section 33 or section 34; or
- (e) that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud."

Upon reading Section 36(2) it seems to us clear that the Returning Officer has to examine all the nomination papers at the time of the scrutiny for the purpose of accepting or refusing the nominations; he has to decide all objections which may be made by a party or his legal representative to any nomination; he may, on such objection or on his own motion, refuse any nomination on any of the grounds enumerated in sub-clauses (a), (b), (c), (d) and (e); but before refusing any nomination, he has to make a summary inquiry, as he thinks necessary. If he

accepts a nomination, he has to sign a certificate as given at page 3 of the nomination paper, the certificate being that he has scrutinised the eligibility of the candidate, the proposer and the seconder and has found that they are respectively qualified to stand for election, to propose and to second the nomination, if he rejects a nomination, he has to record in writing a brief statement of his reasons for such rejection.

In the present case, as has been stated above, there was no objection by any party to any nomination. But the Returning Officer had, nevertheless, to find, among other things, that Shri Krishna Chandra was a qualified candidate. Qualifications both under the Representation of the People Act, 1951, and the Constitution of India were necessary. Under the Act of 1951, a candidate for membership of the House of the People must be an elector for any Parliamentary constituency [Section 4(d)]. Section (2) (1) (e) of the Act defines 'elector' as a person whose name is for the time being entered in the electoral roll of the Constituency. Article 84 of the Constitution of India provides, *inter alia*, that a person shall not be qualified to be chosen to fill a seat in the House of the People unless he is not less than 25 years of age. It may be noted that under the Constitution of India and also under the Representation of the People Act, 1950, a person must not be less than 21 years of age in order to be entitled to be registered as an elector in the Electoral Roll.

It, thus, appears that the Returning Officer had to find (i) that Shri Krishna Chandra's name was entered in the Electoral Roll and that (ii) he was not less than 25 years of age. He could not certify that Shri Krishna Chandra was a qualified candidate unless he was satisfied on the aforesaid two points. Section 36(7) (a) of the Representation of the People Act, 1951, no doubt, provides that the production of a certified copy of an entry in the Electoral Roll shall be conclusive evidence of the right of an elector named in that entry to stand for election. In other words, the certified copy of the entry in the electoral Roll shall be conclusive evidence not only of the fact that the candidate's name was entered in the Electoral Roll, but also on the point of age of the candidate. But from this it does not follow that the certified copy shall be the only evidence admissible in proof of the said matters. Conclusive evidence means the evidence that concludes the matter and the matter cannot be allowed to be rebutted by any other evidence. But in a case where conclusive evidence is not forthcoming, it cannot be said that any other evidence is not admissible. In *Shiva Shanker Singh—Versus—Phakur Moti Singh* (reported in Election Cases, India & Burma, 1920-1935 by Hammond, at page 95), it has been held that although the certified copy of an entry in an Electoral Roll is conclusive proof of the right of an elector named in that entry to stand for election, other evidence in proof of the matter is admissible. In this case, the Returning Officer, in order to satisfy himself on the aforesaid two points, did nothing excepting that he demanded the Electoral Roll or a certified copy thereof from the respondent No. 6. He made no inquiry on the point of age. The Returning Officer definitely says in his evidence that he had satisfied himself at the time of filing of Krishna Chandra's nomination papers that his name and roll number as entered in the nomination papers were the same as those entered in the Electoral Roll. This he had done under the provisions of Section 33(5) of the Act. It has been contended by Mr. Awdhesh Nandan Sahay that, in view of the verification at the earlier stage under Section 33(5), it was not obligatory upon the Returning Officer to verify the same fact again on reference to the Electoral Roll; he could well rely upon the previous verification. Mr. P. R. Das has, on the other hand, urged that the previous verification was only a casual examination made with a view to give opportunity to the candidate to remove any clerical error in the nomination paper, whereas the examination under section 36(2) was full and complete, made with a view to find out whether the candidate was or was not qualified. Mr. P. R. Das's contention may be correct, but we are not prepared to assume that the Returning Officer has to completely ignore the knowledge that he had, at the earlier stage, satisfied himself on the point that the name and electoral roll number of the candidate as entered in the nomination paper were the same as those entered in the Electoral Roll. If there is a dispute regarding the identity of the candidate, or if the scrutiny is being held by a different officer from the one who received the nomination paper, or if there is any doubt on the point in the mind of the Returning Officer, the Returning Officer may well repeat the process of verification. In this case, none of these circumstances or any other circumstance existed to demand a fresh verification of the name and electoral roll number.

As regards the statement of age in the nomination papers, the Returning Officer, certainly, did not check it at the earlier stage. If the certified copy of the Electoral Roll had been produced, it would have been conclusive proof of the age. But when that conclusive evidence was not forthcoming, the Returning Officer ought to have made some sort of inquiry on this point before rejecting the nomination.

We have already stated above that a summary inquiry was necessary before refusing a nomination. It has been held in a case reported in Hammond's Election Cases, 1920-1935, at page 595, that it is improper to reject a nomination paper without making a summary inquiry. In *Kalapraj Versus Bisambhar Nath Tripathi* (reported in Doabia's Election Cases, Vol. II page 355) it has been observed at page 360 "It was, therefore, in our opinion, necessary for the Returning Officer to have made some inquiry and not to have rejected the nomination merely on the ground that the candidate was unable to produce the certified copy of the electoral roll".

From the evidence of the Returning Officer it is abundantly clear that he made no sort of inquiry, excepting demanding the Electoral roll or a certified copy thereof. There was, in our opinion, scope for making some inquiry into the question of age. The order (Ex. 3) of the Returning Officer, rejecting the nomination, indicates that he was only thinking of verifying certain entries in the nomination papers with reference to the entries in the Electoral roll and he entirely ignored the fact that he was, under the law, required to make some sort of summary inquiry before refusing a nomination.

[The Returning Officer, it has been argued on behalf of the contesting respondent, rejected the nomination on the ground as specified in clause (a) of Section 36(2) of the Act, namely, on the ground that the candidate was not qualified to be chosen to fill the seat under the Constitution or the Act. But the order of the Returning Officer does not clearly and specifically state that he is rejecting the nomination on such ground. In other words, there is no clear and specific finding of the Returning Officer that the candidate is not qualified as required under the law. As a matter of fact, the Respondent No. 6 (Shri Krishna Chandra) was fully qualified, as will appear from the certified copy of the Electoral Roll (Ex. 1) which has been produced in this case: This position has not been challenged by the learned counsel for the Respondent No. 1.

From the above discussions, it is manifestly clear that the nomination of the Respondent No. 6 was improperly rejected and we find accordingly.

The next question for consideration is, whether the result of the election has been materially affected by the improper rejection of the nomination of the respondent No. 6. There is a general presumption that in the case of improper rejection of a nomination the result of the election must be deemed to have been materially affected. In the case of an improper rejection of a nomination, the whole electorate is deprived of its right to vote for a candidate who was qualified to stand for election. No body can say with certainty what would have been the result if the candidate, whose nomination was improperly rejected, was permitted to contest the election. There are numerous cases in which this general presumption has been applied by different election tribunals. In this connection, reference may be made to the cases reported in Doabia's Election Cases, Vol. I, page 80; Doabia's Election Cases, Vol. I, page 85; Doabia's Election Cases, Vol. I, page 211; and Doabia's Election Cases, Vol. I, page 259. In a recent case published in the Gazette of India, Extraordinary, dated the 20th October, 1952, the same view has expressed.

In this case, however, some evidence has been adduced to show that the result of the election, in all probabilities, would have been different, if the nomination of Shri Krishna Chandra had not been rejected. We think, it is unnecessary to deal with that evidence, which is more or less guess work of the witnesses, in view of the general presumption arising in the case of improper rejection of a nomination. The presumption has not been rebutted in this case.

This issue is, accordingly, answered in the affirmative.

Issue No. 1.—This issue has not been pressed by the contesting Respondent. The election petition has been filed by Shri Balinath Prasad Verma, one of the candidates at the election. Under Section 81 of the Representation of the People Act, 1951, the petitioner was, certainly, entitled to file the election petition. This issue is, therefore, decided in favour of the petitioner.

Issues No. 3, 4 and 5.—Section 100 of the Representation of the People Act, 1951, lays down, *inter alia*, "if the Tribunal is of opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void". In view of the above provision of law, we find and declare that the election in the Constituency in question is wholly void.

From the above finding it follows necessarily that the election of Respondent No. 1 (Shri Chandreshwar Narain Prasad Singh) is liable to be set aside.

As this election petition has arisen on account of an error of judgment on the part of the Returning Officer, we hold that parties in this case should bear their own costs.

ORDER.

The election petition is allowed. The election to the House of the People from Muzaffarpur North-West Constituency is declared wholly void and the election of the Respondent No. 1 is, accordingly, set aside. The parties do bear their own costs.

Patna, dated the 28th November, 1952.

1. (Sd.) BASU PRASAD,
Chairman. 28-11-1952.

2. (Sd.) ADITYA NARAYANLAL,
Member, 28-11-1952.

At the time of scrutiny it is necessary for the Returning Officer to have before him the electoral roll or its certified copy with a view to determine whether a candidate is qualified to stand for election or not. So it can't be claimed that when at the time of scrutiny the Returning Officer demanded from Shri Krishna Chandra the certified copy of his electoral roll, he was not justified in doing so. The evidence of Shri Krishna Chandra shows that he was aware of the importance of producing the certified copy of his electoral roll before the Returning Officer at the time of the scrutiny of his nomination paper. But through some negligence it was left back. So it is an after-thought to claim that the production of the certified copy of the electoral roll was not at all necessary at the time of the scrutiny of his nomination paper as the Returning Officer had already seen it under provisions of section 33 of the Representation of the People Act, 1951, when he was filing his nomination paper before the Returning Officer. A plea to this fact put forward by him before the Returning Officer was meant only to mislead the Returning Officer from doing his work properly. The Returning Officer was also not bound to adjourn the scrutiny of the nomination paper of Shri Krishna Chandra only to enable him to produce the certified copy of his electoral roll as that would have meant doing the work of scrutiny in piecemeal fashion and would have been against the spirit of sub-section 5 of section 36 of the Representation of People Act of 1951. The adjournment may have been a question of half an hour in case of Shri Krishna Chandra. But in a similar circumstance it may have been a question of hours and the adjournment would have meant putting the other candidates to unnecessary trouble and harassment for no fault of theirs. It was also not necessary for the Returning Officer to hold a summary inquiry as contemplated by sub-section 2 of section 36 of the Representation of People Act 1951 as the production of the certified copy of the electoral roll would have been conclusive evidence of the right of Shri Krishna Chandra to stand for election. It is true that conclusive evidence does not mean that in absence of such an evidence no other evidence can be produced. But in my opinion the production of the certified copy of the electoral roll was the only evidence which could have been produced by Shri Krishna Chandra to satisfy the Returning Officer that he (Shri Krishna Chandra) was qualified to stand for election. Moreover there is nothing to show that Shri Krishna Chandra had wanted to produce before the Returning Officer any other evidence which he could have legitimately produced and the Returning Officer refused to consider it. So in my opinion the nomination paper of Shri Krishna Chandra has not been improperly rejected as has been contended by the petitioner. I need not dilate on the points indicated above as in law the opinion of the Tribunal is final on the question to be decided by us.

Patna, dated 28th November, 1952.

(Sd.) HARGOBIND PRASAD SINHA,
Member. 28-11-1952.

P. S. SUBRAMANIAN,
Officer on Special Duty